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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON
5

6 ACTION RECYCLING, INC.,

7 Petitioner,
8

9 vs.

10 UNITED STATES OF AMERICA,

11 Respondent.
12

NO. CV-11-00457-JLQ

ORDER RE: PETITION TO QUASH

13
14 BEFORE THE COURT is Petitioner Action Recycling, Inc.'s Petition to Quash
15 and Motion to Quash (ECF No. 1 & 2) and Respondent's Motion to Dismiss or Deny the
16 Petition (ECF No. 3). Petitioner has not filed a response to the Government's Motion to
17 Dismiss and the time for filing such has expired. Pursuant to Local Rule 7.1(h) the court
18 has determined that oral argument is not warranted. Although pursuant to Local Rule
19 7.1(e), Petitioner's failure to file a response to the Motion to Dismiss may be considered
20 by the court as consent to the granting of the Motion, the court has reviewed and herein
21 addresses the Motion.

22 **I. Introduction**

23 Petitioner filed this Petition to Quash¹ summonses issued to the Inland Northwest
24 Bank and the Washington Trust Bank for the records of the Petitioner. Petitioner argues
25 that the summonses issued by the Internal Revenue Service (IRS) on November 10,
26 2011, and re-issued November 28, 2011 to the banks are invalid for several reasons.

27
28 ¹The Motion to Quash (ECF No. 2) is identical in all
material respects to the Petition to Quash (ECF No. 1).

1 Petitioner argues that the summonses bore the incorrect name "Action Recycle," when
2 the proper name is "Action Recycling, Inc." Petitioner argues that a cover letter with the
3 summonses informed Petitioner that it had 30 days to move to quash the summons, when
4 in fact under 26 U.S.C. § 7609(b)(2)(A) the time period is 20 days. Third, Petitioner
5 argues that the summonses are improper because they sought information already in the
6 possession of the Internal Revenue Service.

7 **II. Motion to Dismiss**

8 The Government makes several arguments why this action should be dismissed or
9 the Petition to Quash denied. First, the Government argues that the summonses
10 referenced in the Petition have been withdrawn, and new summonses seeking the same
11 documents were re-issued on December 19, 2011. The new summonses are not
12 referenced in the Petition to Quash. The Government argues this action is moot by
13 reason of the withdrawal and reissue of the summonses. Second, the Government
14 argues it was not properly served with the Petition to Quash. Third, the Government
15 argues that it is well established that the IRS is entitled to seek the same information
16 from a taxpayer and also from a third-party--in this case from banking institutions.

17 **III. Discussion**

18 Several of the arguments raised by the parties can be quickly disposed of. First,
19 the fact that the summons bore the name "Action Recycle" instead of "Action Recycling,
20 Inc." is not grounds to quash the summons, particularly when the taxpayer, Petitioner
21 herein, was clearly on notice and responded to the summons. Additionally, the
22 Government re-issued the summons to correct the misnomer. Second, the fact that the
23 Government's cover letter misinformed Petitioner that it had 30 days to move to quash,
24 rather than 20 days is not material or prejudicial. Petitioner timely moved to quash the
25 summons.

26 The court rejects the Government's mootness argument. The Government argues
27 that this action is moot because its scrivener error in the naming of Petitioner caused it to
28 withdraw and re-issue the summonses, and Petitioner did not amend its Petition to reflect

1 the date of the re-issued summonses. However, the Government admits that the re-
2 issued summonses seek the exact same documents. (ECF No. 3, p. 2). The Government
3 argues that because Petitioner did not amend its Petition to Quash to reflect the date of
4 the new summonses this action is moot. To accept such argument would elevate form
5 over substance. The same dispute over the validity of the summonses exists. The
6 correction of the error on the summonses by the Government does not render moot the
7 dispute. Similarly, the court does not accept as determinative the Government's
8 argument that it was not properly served. The Government has appeared and argued the
9 merits of the Petition.

10 Having disposed of those technical arguments, the court is left with the central
11 issue: were the summonses issued to the banks duplicative in seeking information that
12 was already in the possession of the IRS from the taxpayer as Petitioner argues, or is the
13 IRS allowed to seek the information from a third-party to verify taxpayer information?

14 In order to defeat a petition to quash and compel compliance, the Government
15 must establish: 1) the investigation is being conducted for a legitimate purpose; 2) the
16 material being sought is relevant to that purpose; 3) the information sought is not already
17 in the IRS's possession; and 4) the IRS complied with the required administrative steps.
18 *Crystal v. United States*, 172 F.3d 1141, 1143-44 (9th Cir. 1999) citing *United States v.*
19 *Powell*, 379 U.S. 48 (1964). The Government's burden in establishing these elements is
20 a "slight one" and "may be satisfied by a declaration from the investigating agent." *Id.* at
21 1144. Once the Government has met this burden, the taxpayer bears the heavy burden of
22 establishing the lack of a valid purpose for the investigation. The taxpayer must allege
23 specific facts and evidence to support the allegation of bad faith or improper purpose. *Id.*
24 see also *Liberty Financial Serv. v. United States*, 778 F.2d 1390, 1392 (9th Cir. 1985)
25 ("The burden then shifts to the taxpayer to show an abuse of process, e.g., that the
26 summons was issued in bad faith for an improper purpose.")

27 Here, the Government has filed the Declaration of Revenue Agent Heather Blair
28 (ECF No. 5). The Blair Declaration states that the investigation was commenced for a

1 legitimate purpose--to determine the proper tax liability of Action Recycling. (Blair Dec.
2 ¶ 3). The Declaration further states that the summonses were issued in furtherance of
3 this investigation. The declaration states that the IRS "does not possess any records
4 received from Inland Northwest Bank or Washington Trust Bank concerning Action
5 Recycling's FYE 2009 or FYE 2010." (Blair Dec. ¶ 15). Finally, the Declaration states
6 that all administrative steps as required by the Internal Revenue Code have been
7 followed. (Blair Dec. ¶ 19). The Blair Declaration is sufficient to meet the Government's
8 burden of demonstrating that the summons was properly issued for a legitimate purpose.
9 See Liberty Financial Serv. v. United States, 778 F.2d 1390, 1392 (9th Cir. 1985)
10 ("Assertions by affidavit of the investigating agent that the requirements are satisfied are
11 sufficient to make the prima facie case.")

12 Petitioner has not filed a response to the Government's Motion to Dismiss.
13 Petitioner has failed to meet its "heavy burden" of establishing that no valid purpose
14 exists for the investigation. The Government is allowed to verify taxpayer records by
15 obtaining those records from a third-party. In *Liberty Financial Serv.*, the Ninth Circuit
16 rejected the argument which Petitioner now makes:

17 Liberty argues that it had already provided the requested information. The district
18 court held that the IRS could not ascertain whether all relevant records had been
19 released until it had examined the requested documents. **It also held that the IRS**
20 **is entitled to compare for accuracy, the records produced by Liberty with**
those held by Wells Fargo. We agree.

21 *Id.* at 1392-1393 (emphasis supplied). Petitioner's argument that the Government had
22 already looked at its banking records during an on-site audit, and thus was not entitled to
23 obtain those records via summons from the bank, is rejected.

24 Accordingly,

25 **IT IS HEREBY ORDERED:**

26 1. The issues presented in the Petition and Motion (ECF No. 1 & 2) and Motion to
27 Dismiss/Deny the Petition (ECF No. 3) do not require oral argument, and the hearing
28 date of March 27, 2012 is hereby **STRICKEN**.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE